

RETURN TO COVERED EMPLOYMENT

(A.C.A. § 24-7-708; § 24-7-202)

(Amended by Act 1293 of 1995; Act 384 of 1997; Act 30 of 1999;
Act 1146 of 2001; and Act 911 of 2005)

DEFINITIONS

Covered salary means remuneration paid from a covered employer to an ATRS retiree on which waiver contributions are paid.

Earnings limitation means the limitation applicable to a member's retirement annuity when a retiree receives remuneration from a covered employer.

Normal retirement age means sixty-five (65) years of age.

Retiree means a member receiving an ATRS retirement annuity.

Retires means that a member ceases to be active and is eligible to receive an ATRS annuity.

AGE AND SERVICE RETIREE

1. If a retiree returns to work service for a covered employer¹ without rescinding retirement under § 24-7-717, then, for each twelve-month period ending June 30, the amount of the member's retirement annuity shall be subject to a limitation equivalent to twice the limitations imposed by the Social Security retirement test.²
 - A. A retiree reaching the System's normal retirement age may return to service without being subject to the earnings limitations.³ Normal retirement age for the System means sixty-five (65) years of age.
 - B. Effective July 1, 1992, a retiree, who is under normal retirement age, may receive earnings from a covered employer up to twice the Social Security earnings limitation amount without affecting his/her ATRS annuity benefits. If his/her ATRS covered earnings exceed that amount, ATRS will reduce the member's retirement annuity \$1 for each \$2 earned in covered salary above the earnings limitation amount.

¹ Prior to July 1, 1991, the earnings limitation applied to retirees who were

- Employees with ATRS, ASHERS, or ASERS from 7-1-71 through 6-30-77;
- Employees with a public employer, whose employers are covered by a state-supported retirement plan or the University of Arkansas from 7-1-77 through 6-30-78;
- Employees of a public employer whose employees are covered by a retirement plan supported wholly or in part by state contributions from 7-1-78 through 6-30-91.

² The Social Security earnings limitation ceases upon reaching Social Security "full retirement age" as defined P.L. 106-182,

³ In establishing an equivalent limitation for the System, ATRS considers full retirement age to be the "normal retirement age" for the System under A.C.A. § 24-7-202(19).

- C For each year ending June 30, the Social Security retirement test to be considered shall be the test in effect for the calendar year beginning the January 1 immediately preceding June 30. The retirant's earnings shall be his or her remuneration for the employment for the year ending June 30.
- D
 - i. For those retirants exceeding the earnings limitation, the System will suspend annuity payments to collect the reduction when the earnings limitation is exceeded. If at the end of the fiscal year, the System has not received from the suspension the amount due from the retirant exceeding the earnings limitation, the System may carry over suspension of benefits into the next fiscal year.
 - ii. Upon written request by the retirant upon reemployment, the System may initiate an equal monthly reduction of the retirant's retirement annuity in the fiscal year in which the earnings limitation will be exceeded to collect the earnings limitation reduction.
 - iii. The amount recovered by ATRS will not exceed the amount of benefits paid during the year(s) in which the earnings limitation is/was exceeded.
 - iv. In extraordinary hardship circumstances, the retirant may request an alternate method of repayment other than total suspension of benefits for a violation of the earnings limitation.
 - v. For questions not covered by this rule, see Rule No. 9-7 (Error Corrections and Collection of Overpayments).
- 2. A. Upon acceptance of employment with a covered employer, the retirant and employer must report to ATRS that the retirant has returned to covered employment. A Statement of Employment form must be completed immediately by employers and retirants upon acceptance of employment for each retirant hired in a position covered by ATRS.
- B. Employers will report monthly all retirants who have returned to employment in an ATRS covered position. The monthly report will be filed on a Return to Service form, which will be furnished by ATRS.
- C. In the event that both a retirant and employer fail to notify the System of a retiree's return to covered employment, any retirement benefits paid in violation of this policy during the time of employment are subject to collection by the System under the overpayment policy. ATRS reserves the right to immediately suspend the retirement annuity until all benefits overpaid to the retirant are repaid to the System.

3. A. Effective July 1, 1977, a retirant may receive remuneration as an employee from any private employer or as a member of the General Assembly without any effect on his/her annuity.⁴
 - B. Effective July 1, 1991, an age and service retiree may be employed by a public employer whose employees are not covered by ATRS without any effect on his/her annuity.
4. When a retirant returns to covered employment and does not rescind his/her retirement, the retirant shall not accrue additional service credit in the System, and no contributions shall be remitted on behalf of the retirant.⁵
5. For the return to work rules applicable to disability retirees receiving benefits under § 24-7-704, see Policy No. 9-3.

WAIVER OF EARNINGS LIMITATION

1. A. In accordance with Act 30 of 1999 and Act 1146 of 2001 as amended by Act 911 of 2005 and with rules and regulations adopted by the State Board of Education, the Arkansas Department of Education (ADE) may request of the ATRS Executive Director a waiver of the conditions subjecting annuities to the ATRS earnings limitation.
 - B. All requests for waiver must originate with ADE and be submitted to the ATRS Executive Director for approval within sixty (60) days of employment. If approved, the waiver shall be effective for one (1) year from the date of hire or until the end of the current fiscal year, whichever comes first, with the option to renew annually for up to a total of three (3) years as requested by ADE. Waiver renewals are not automatic and any extensions must be approved by the ATRS Executive Director.
 - C. Waiver requests (1) initiated by the employer prior to the member's effective date of retirement or (2) filed within thirty (30) days following the member's effective date of retirement will not be eligible for consideration by ATRS.
 - D. Effective for the fiscal year beginning July 1, 2006, retirants who have completed the 10-year maximum duration period allowed under T-DROP will not be eligible for a waiver.

⁴ From 7-1-71 through 6-30-77 this "exemption" covered employees receiving remuneration "from any other public employer or private employer."

⁵ Act 1293 of 1995 provided that if a retirant is employed in a covered position by a public college, university, or vocational-technical school, his/her annuity shall not be subject to the limitations provided in No. 1 above. This exemption was repealed by Act 384 of 1997, effective July 1, 2007.

2. Effective July 1, 2005, under Act 911 of 2005, the ATRS Executive Director is authorized to take appropriate action on waivers of the ATRS earnings limitations requested by the Department of Education:
 - A. If the retiree is hired by a public school district due to a shortage of certified teachers in a critical academic area in which the retiree is certified; OR
 - B. If the retiree is hired as a superintendent due to a reconstitution or reorganization of a public school district as allowed in A.C.A. § 6-15-201 et.seq., § 6-15-401 et.seq., or § 6-20-1901 et.seq. following an appropriate determination by the State Department of Education that:
 - i. The public school district has failed to meet standards of accreditation pursuant to A.C.A. § 6-15-201 et.seq.; OR
 - ii. The public school district is in academic distress status for failing to meet the minimum level of academic achievement on the ACTAAP examinations pursuant to A.C.A. § 6-15-401 et.seq.; OR
 - iii. The public school district is in fiscal distress status pursuant to A.C.A. § 6-20-1901 et.seq.; AND
 - iv. An appropriately qualified applicant, as determined by the State Department of Education, who is not an ATRS-covered retirant is not available to be employed.
3. Critical academic areas in which there is a shortage of certified teachers shall be determined annually by the State Department of Education.
4. Employers shall maintain audit files identifying personnel granted a waiver and documenting the reasons for the waiver and will be responsible for reporting to ATRS, all retirees who have returned to employment under these provisions.
5. Beginning July 1, 2005, a covered employer who employs a retired member who is approved for a waiver under this policy shall remit to the System an amount equal to the combined employee and employer contributions rate in effect at the time of the employment. This waiver fee shall be paid on all covered salary earned in the fiscal year and shall not be charged to or collected from the retirant. These amounts shall be recorded by the System in the ADE Waiver Income Account. (Act 911 of 2005).

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